IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.505 OF 2006
IN
ARBITRATION PETITION NO.178 OF 2006

Tushar Harishankar Mhatre & Ors. .. Appellants.
V/s.
M/s.Mistry & Co. .. Respondents.

Mr.Janak Dwarkadas, senior counsel with Mr.D.M. Gaonkar for the appellants.

Mr.U.J. Makhija i/by M/s.Mannadiar & Co. for the respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 16TH AUGUST, 2006.

P.C. :

Heard Mr.Dwarkadas in support of this appeal. Mr.Makhija appears for the respondents.

2. The appellant seeks to challenge the order passed by the learned Single Judge on an arbitration petition which has been rejected by order dated June 26, 2006. The case of the appellant is that although the respondents were appointed as development consultants, they have not discharged their obligation. The case of the appellant is that their authorisation was terminated on March 31, 2000. No such letter of termination has been brought to out notice. It is contended that the respondents abandoned the work. The finding is to the contrary. There is deduction granted to the extent of the security arrangement which the learned Arbitrator

found to be inadequate. The learned Arbitrator has also granted deduction to the extent of the payments paid to Mr.I.P. Mistry as an architect so that there is no over-laping in the arbitration award passed in the sum of Rs.66.70 lacks and that is on the basis of the assessment of the claim made by the respondents before the Arbitrator. Mr.Dwarkadas, learned senior counsel for the appellant referred to us to para 116 and 117 of the judgment of the Apex Court in the case of MD, Army Welfare Housing Organisation V/s. Sumangal Services (P) Ltd., reported in 2004 (9) Supreme Court Cases 619. This is to submit that where a party repudiates the obligation or abandons the work, such a party cannot take benefit of any plea of substantial performance.

3. In the present case, there is no such finding either by the Arbitrator or by the learned Single Judge. The only ground which was canvassed before the learned Single Judge, as seen from para 4 was based on the finding given by the Arbitrator in para 50 of the award. The learned Single Judge has dealt with the submission of the appellant. We do not think that there is any error of law in rejecting the petition.

4. The appeal is, therefore, dismissed in limine.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)